

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHARLES SMITH; HECTOR CASAS; and BARRY NEWMAN, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

CRST VAN EXPEDITED, INC. and DOES 1 through 50,

Defendants.

CASE NO. 10-CV-1116 BEN (WMC)
ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT AGREEMENT

[Docket No. 101]

Presently before the Court is Plaintiffs' Motion to Enforce Settlement Agreement. (Docket No. 101.) For the reasons stated below, the Motion is **GRANTED IN PART AND DENIED IN PART**. Defendant is **ORDERED** to submit documentation of its compliance with the Settlement Agreement, as detailed below.

BACKGROUND

This is a class action brought by truck drivers against their employer for failure to pay minimum wages during certain stages of the company's driver training program ("DTP") and related violations of California Business and Professions Code Section 17200. The class representatives are Charles Smith, Hector Casas, and Barry Newmann, and the defendant trucking company is CRST Van Expedited, Inc. ("CRST").

1 The parties agreed to a proposed settlement that Judge Irma E. Gonzalez
2 preliminarily approved on April 23, 2012. On September 24, 2012, the parties moved
3 for final approval of the settlement. The settlement provided the class with a financial
4 benefit of more than \$11,600,000. This included a non-reversionary \$2,625,000 cash
5 payment to class members and over \$9,000,000 in outstanding debt for training and
6 related expenses under the Driver Employment Contracts that CRST agreed to relieve.
7 In addition, CRST agreed to significant changes to its policies and training program,
8 including a full disclosure form provided to employees prior to enrollment in the
9 training program, temporary employee status for drivers when tested by the Department
10 of Motor Vehicles, payment for drivers during orientation, payment by a split mile
11 basis rather than \$50 per day for over-the-road training, and a \$250 bonus for all
12 drivers who remain employed eight months after completion of the training program.
13 On January 14, 2013, Judge Gonzalez granted the motion for final approval of class
14 action settlement.

15 Presently before the Court is Plaintiffs' Motion to Enforce Settlement
16 Agreement. (Docket No. 101.)

DISCUSSION

18 The Court approved and adopted the Settlement Agreement, maintaining
19 jurisdiction for enforcement purposes. (Settlement Agr. ¶ XII(18).) This Court has the
20 authority to enforce the Settlement Agreement. *See Callie v. Near*, 829 F.2d 888, 890
21 (9th Cir. 1987).

I. REQUEST FOR DOCUMENTATION OF COMPLIANCE WITH THE SETTLEMENT AGREEMENT

Plaintiffs argue that they cannot determine whether CRST has implemented several of the provisions of the Settlement Agreement. Class Counsel seeks documentation of CRST's compliance with the disputed provisions of the Settlement Agreement. Class Counsel argues that although CRST agreed to provide a declaration to Class Counsel within 30 days of the date the changes were implemented, or by June

1 14, 2013, they did not receive the required declaration.

2 Each disputed provision of the Settlement Agreement will be addressed in turn.

3 **A. Collection of Debts from Settlement Class Members**

4 Class Counsel argues that it cannot determine whether the debt forgiveness
5 portion of the Settlement Agreement has been implemented. The Settlement
6 Agreement provides:

7 Defendant will not enforce the alleged contractual rights it believes it has
8 to receive payment for training and related expenses owed by Settlement
9 Class Members, which Defendant estimates is an amount in excess of
10 \$6,900,000. The amounts owed by the Settlement Class Members will
11 be shown on CRST's books as satisfied, and, if notified as to any issues
12 related to those amounts, Defendant will confirm that the amounts owed
13 have been satisfied. . . In addition, within 30 days after the Effective
14 Date, Defendant will notify its third-party collection agencies that the
15 outstanding amounts owed by the Settlement Class Members in the
approximate amount of \$9,000,000 have been satisfied and that further
collection actions shall cease all collection efforts as of the Effective
Date. . . Defendant shall cause its third-party collection agencies to
notify the credit reporting agencies that the outstanding amounts have
been satisfied and that any negative references on the credit reports of the
Contract Students arising out of those outstanding amounts shall be
removed.

16 (Settlement Agr. § IV.2.a.)

17 As evidence of its compliance with this provision of the Settlement Agreement,
18 CRST submits a declaration by Eric A. Baker, General Counsel of CRST. Baker
19 testified:

21 CRST ceased all collection efforts on amounts owed by Settlement Class
22 Members in connection with training and related expenses. CRST
23 considers the outstanding amounts owed in the approximate amount of
\$9 million to have been satisfied. Within 30 days of February 14, 2013,
24 CRST notified its third-party collection agency, United Resource
Systems, Inc. that (1) all further collection actions were to cease effective
March 16, 2013, 30 days after February 14, 2013; (2) all amounts
25 collected from Settlement Class Members to satisfy debts for training and
related expenses after February 14, 2013 were to be returned; and (3) that
credit agencies were to be notified that the outstanding amounts have
been satisfied and that any negative references in the credit reports of
Settlement Class Members arising out of those amounts were to be
removed.

28 (Baker Decl. ¶ 4.)

1 In addition, CRST submits a declaration by Michael Lammars, President of
2 United Resource Systems, Inc. (“URS”), which states: “At the request of CRST, URS
3 cancelled the collection accounts of class members in the Smith case as of March 15,
4 2013, and notified credit bureaus of the cancellation of these accounts.” (Lammars
5 Decl. ¶ 5.)

6 First, Class Counsel Douglas J. Campion argues that he was told by several class
7 members that collection efforts on the forgiven debt for the training expenses was still
8 occurring between the dates of preliminary approval and the effective date. (Campion
9 Decl. ¶¶ 2-3.) Whether CRST attempted to collect the forgiven debt between the date
10 the Court granted preliminary approval of the settlement and the February 14, 2013
11 effective date, however, is irrelevant. CRST did not agree to suspend its collection
12 efforts during this time.

13 Second, Class Counsel submits a declaration by Class Member William Scott
14 Rizzie as evidence of CRST’s alleged noncompliance. Rizzie testifies that on October
15 10, 2013, he contacted an organization that provides consumers with their credit reports
16 by telephone. (Rizzie Decl. ¶ 4.) During that telephone call, Rizzie allegedly learned
17 that a \$5,285 debt to CRST was still listed on his credit report. (*Id.*) On October 14,
18 2013, he obtained a written copy of his credit report which confirmed the debt was
19 listed. (*Id.*) In addition, Rizzie testifies that he received a telephone call from a
20 collection agency after February 14, 2013, seeking payment for the alleged debt. (*Id.*
21 ¶ 5.)

22 In regards to the alleged telephone call from a collection agency, CRST points
23 to Lammars’s declaration. Lammars testifies that URS’s records relating to Rizzie’s
24 collection account “indicate Mr. Rizzie contacted URS on February 19, 2013, and
25 advised a URS representative that he was a class member in this case, and that his debt
26 to CRST has been discharged by virtue of the settlement of the case. Mr. Rizzie was
27 advised by the URS representative that his account would be closed and removed from
28 the credit bureaus. On February 28, 2013, URS cleared all balances associated with

1 Mr. Rizzie's collection account, and on March 2, 2013, URS notified the credit bureaus
 2 that Mr. Rizzie's collection account balance was zero." (Lammers Decl. ¶¶ 3-4.) In
 3 addition, CRST argues that the telephone conversation took place on February 19,
 4 2013, almost a month before CRST was required to instruct URS to stop collecting
 5 class members' debts.

6 The Court finds that there is conflicting evidence in regards to whether CRST
 7 complied with the debt forgiveness portion of the Settlement Agreement. Accordingly,
 8 Plaintiffs' motion seeking documentation of CRST's compliance is **GRANTED**, in
 9 regards to the collection of debt from the class members.

10 **B. Payment of California Drivers as Temporary Employees While
 11 Taking the California DL 170 Driving Test**

12 Class Counsel argues that it cannot determine whether CRST has complied with
 13 the provision of the Settlement Agreement regarding the payment of California drivers
 14 as temporary employees while taking the California DL 170 driving test. The
 15 Settlement Agreement provides:

16 The Contract Students will be considered "temporary employees," in
 17 accordance with the requirements of the California Department of
 18 Motor Vehicles ("DMV") for Defendant to act as the DMV's agent in
 19 administering the DL 170 test, for the day on which they take the DL
 170 test, and Defendant will pay those Contract Students the California
 minimum wage for all "hours worked" on that day.

20 (Settlement Agr. § IV.2.b.ii.)

21 Although CRST claimed that it had complied with this provision in its
 22 Opposition, CRST later submitted a supplemental declaration by Baker, in which he
 23 testified that "[a]fter submitting my original declaration, I was informed that CRST had
 24 not yet begun paying Contract Students the California Minimum Wage for all 'hours
 25 worked' on the day they take the DL-170 commercial truck driving road test." (Baker
 26 Suppl. Decl. ¶ 3.) In addition, Baker testified that "[u]pon learning this, I immediately
 27 took steps to ensure that CRST implemented the change. Specifically, I instructed
 28 personnel at CRST to identify all Contract Students who had taken the DL-170 Test

1 since May 15, 2013 and to determine the number of hours the Contract Students
2 worked on the[] day of the test. . . . While not all of the drivers who have taken the
3 DL-170 test since May 15, 2013 are entitled to compensation for six ‘hours worked’
4 in connection with the DL-170 test, CRST will pay those drivers the California
5 minimum wage rate of \$8.00 per hour for 6 hours. CRST will pay Contract Student
6 drivers who take the test on a going forward basis the California minimum wage rate
7 of \$8.00 per hour for all ‘hours worked’ in connection with the DL-170 test.” (*Id.* ¶ 4.)

8 Although Baker’s Supplemental Declaration evidences CRST’s intent to comply
9 with this provision, CRST does not submit evidence showing that it has completed
10 compliance. Accordingly, Plaintiffs’ motion seeking documentation of CRST’s
11 compliance is **GRANTED**, in regards to the payment of California drivers as
12 temporary employees while taking the California DL 170 driving test.

13 **c. Payment of the California Minimum Wage During CRST**
14 **Training**

15 Class Counsel argues that CRST has failed to implement the provision of the
16 Settlement Agreement regarding the payment of the California minimum wage for
17 company orientation activities during Phase 2 of the DTP. The Settlement Agreement
18 provides:

19 Defendant will divide the time spent in Phase 2 into two days for
20 qualification of the drivers under the requirements of the Federal Motor
21 Carrier Safety Regulations and Defendant and up to two days for
22 training of the drivers on Defendant’s policies and procedures. The
23 drivers will become Defendant’s employees at the beginning of the third
24 day, which is the first day of training on Defendant’s policies and
25 procedures. Those employees will be paid the California minimum
wage for the “hours worked” for the training on those last two days of
Phase 2 of the DTP.

(Settlement Agr. § IV.2.b.iii.)

As evidence of its compliance with this provision, CRST points to Baker’s declaration, which states: “CRST has divided the time spent in Phase 2 of the DTP into two days for qualification of the drivers under the requirements of the Federal Motor

1 Carrier Safety Regulations of the U.S. Department of Transportation, and two days for
 2 training of the drivers on CRST's policies and procedures. The driver applicants now
 3 become employees of CRST at the beginning of the third day of Phase 2, and the driver
 4 applicants are paid the California minimum wage for the 'hours worked' for the
 5 training on those last two days of Phase 2 of the DTP. This change was implemented
 6 by May 15, 2013." (Baker Decl. ¶ 6.)

7 As evidence of CRST's noncompliance, Class Counsel points to the Online
 8 General Information Packet, which states that the orientation for the DTP consists of
 9 "3 or 4 days of learning CRST policies and procedures, including a road test." (Pope
 10 Decl., Exh. B, at 7.) Although the Online Information Packet does not conclusively
 11 show that driver applicants are not paid the California minimum wage for the 'hours
 12 worked' for the training on the last two days of Phase 2 of the DTP, it does create a
 13 dispute as to whether CRST complied with this provision of the Settlement Agreement.
 14 Accordingly, Plaintiffs' motion seeking documentation of CRST's compliance is
 15 **GRANTED**, in regards to the payment of the California minimum wage for company
 16 orientation activities during Phase 2 of the DTP.

17 **D. Payment of Contract Students on Mileage Basis During
 18 Phase 3**

19 Class Counsel argues that CRST has failed to implement the provision of the
 20 Settlement Agreement regarding the payment of drivers on a mileage basis during
 21 Phase 3 of the DTP. The Settlement Agreement provides: "Defendant will pay the
 22 Contract Students during Phase 3 of the DTP on a dispatched split mile basis rather
 23 than \$50 dollars per day." (Settlement Agr. § IV.2.b.iv.)

24 As evidence of its compliance with this provision, CRST points to Baker's
 25 declaration, which states: "During Phase 3 of the DTP, CRST pays Contract Students
 26 on a dispatched split-mile basis (rather than \$50 per day). This change was
 27 implemented in or about August, 2011." (Baker Decl. ¶ 7.) Class Counsel, on the
 28 other hand, does not submit any evidence showing that CRST has not complied with

1 this provision of the Settlement Agreement. Accordingly, Plaintiffs' motion seeking
2 documentation of CRST's compliance is **DENIED**, in regards to the payment of drivers
3 on a mileage basis during Phase 3 of the DTP.

4 **E. Payment of \$250 Bonus to Contract Students**

5 Class Counsel argues that CRST has failed to implement the provision of the
6 Settlement Agreement regarding the payment of a \$250 bonus to contract students.
7 The Settlement Agreement provides that CRST will "pay each Contract Student who
8 successfully remains employed by Defendant for eight months beginning after the
9 Effective Date a bonus of \$250." (Settlement Agr. § IV.2.b.v.)

10 CRST does not argue that it has already complied with this provision of the
11 Settlement Agreement. Rather, CRST submits Baker's declaration, dated October 14,
12 2013, in which Baker testifies that "[t]his change has been implemented, and on
13 October 15, 2013, CRST will begin paying the \$250 bonuses to Contract Students
14 employed by CRST for eight months beginning after February 14, 2013." (Baker Decl.
15 ¶ 8.) Although Baker's declaration evidences CRST's intent to comply with this
16 provision, CRST does not submit evidence showing that it has completed compliance.
17 Accordingly, Plaintiffs' motion seeking documentation of CRST's compliance is
18 **GRANTED**, in regards to the payment of the \$250 bonus to contract students.

19 **F. Disclosure Form**

20 Class Counsel argues that CRST has failed to implement the provision of the
21 Settlement Agreement regarding the implementation of a new disclosure form. The
22 Settlement Agreements provides that CRST will "implement a new disclosure form for
23 Contract Student recruits, which will be provided to them by the recruiter no later than
24 three days before they enter the DTP." (Settlement Agr. § IV.2.b.i.)

25 CRST does not argue that it has already complied with this provision. Rather,
26 CRST argues that it will implement a new disclosure form for Contract Student recruits
27 in the near future, which will be provided to them by the recruiter no later than three
28 days before they enter the DTP. According to CRST, this disclosure form will notify

1 Contract Student recruits that attendance at the truck driver training school is not a
2 condition of employment and that the drivers may attend any truck driver training
3 school. CRST has not shown that it has complied with this provision of the Settlement
4 Agreement. Plaintiffs' motion seeking documentation of CRST's compliance is
5 **GRANTED**, in regards to the disclosure form.

6 **II. REQUEST TO CONDUCT DISCOVERY**

7 Class Counsel requests permission to conduct discovery to confirm that CRST
8 and URS have complied with the terms of the Settlement Agreement. As discussed
9 above, this Court grants Plaintiffs' motion for CRST to provide documentation that it
10 has complied with certain provisions of the Settlement Agreement. Class Counsel may
11 move to conduct discovery at a later date if the documentation provided proves to be
12 inadequate to determine compliance with the Settlement Agreement. Accordingly,
13 Class Counsel's request to conduct discovery is **DENIED WITHOUT PREJUDICE**.

14 **III. REQUEST FOR ATTORNEYS' FEES**

15 Class Counsel argues that they should be awarded attorneys' fees as a result of
16 having to file a motion to enforce the settlement agreement. The Settlement Agreement
17 provides: "[I]n any suit or court action to enforce the terms of this Agreement, the
18 prevailing party shall be entitled to recover attorney fees and costs." (Settlement Agr.
19 § XII(18).)

20 An award of attorneys' fees at this time would be premature, because the Court
21 has not yet determined whether CRST has complied with the Settlement Agreement.
22 The motion for attorneys' fees is **DENIED WITHOUT PREJUDICE**.

23 **CONCLUSION**

24 For the reasons stated above, the Court **GRANTS IN PART** and **DENIES IN**
25 **PART** Plaintiffs' Motion to Enforce Settlement Agreement and hereby **FINDS** and
26 **ORDERS** as follows:

27 1. Except as otherwise specified herein, the Court for purposes of this Order
28 adopts all defined terms set forth in the Joint Stipulation of Settlement;

1 2. If CRST has not already done so, CRST is ordered to implement the DTP
2 changes by May 26, 2014 which will remain in effect not to commence until the last
3 date when all changes to the DTP program have been implemented by CRST to the
4 Court's satisfaction;

5 3. CRST is ordered to provide Class Counsel with copies of the instructions
6 from CRST to its third-party collection agents about foregoing any collection efforts
7 on the \$9,000,000.00 and proof that such third-party collection agencies have received
8 and implemented such instructions by June 26, 2014;

9 4. CRST is ordered to provide Class Counsel with documentation that
10 evidences third-party debt collector's statements and instructions to the credit reporting
11 agencies that the Class Members' credit reports should indicate the outstanding
12 amounts have been satisfied and that any negative references on the credit reports of
13 the Contract Students arising out of those outstanding amounts shall be removed by
14 June 26, 2014;

15 5. CRST is ordered to provide Class Counsel with documentation that
16 evidences the disclosure form is provided to new Contract Student recruits, and proof
17 that it is provided by the recruiter no less than three days prior to the DTP by June 26,
18 2014;

19 6. CRST is ordered to provide Class Counsel with documentation to establish
20 that the Contract Students are considered "temporary employees" on the day CRST
21 administers and the day on which the Contract Students take the DL 170 test, and that
22 such Contract Students are paid minimum wage for "all hours worked" on that day by
23 June 26, 2014;

24 7. CRST is ordered to provide Class Counsel with documentation to establish
25 that CRST has implemented the Settlement Agreement's terms that they have divided
26 the Contract Students' time into two days for qualification of the drivers under the
27 requirements of the Federal Motor Carrier Safety Regulations and for up to two days
28 for training of the drivers on Defendant's policies and procedures by June 26, 2014;

1 8. CRST is ordered to provide Class Counsel with documentation to establish
2 that CRST has implemented the Settlement Agreement's terms that the Contract
3 Students become CRST's employees at the beginning of the third day, which is the first
4 day of training on CRST's policies and procedures by **June 26, 2014**;

5 9. CRST is ordered to provide Class Counsel with documentation to establish
6 that CRST has implemented the Settlement Agreement's terms that all driver applicants
7 who attend the Phase 2 of the DTP are paid the California minimum wage for the
8 "hours worked" for the training on those last two days of the Phase 2 of the DTP by
9 **June 26, 2014**;

10 10. CRST is ordered to provide Class Counsel with documentation to establish
11 that CRST has implemented the Settlement Agreement's terms that CRST is paying
12 each Contract Student who successfully remains employed by CRST for eight months
13 beginning after the Effective Date a bonus of \$250.00 by **June 26, 2014**;

14 11. CRST is ordered to provide Class Counsel with documentation to establish
15 the date each change as required by the Settlement Agreement has first been
16 implemented by **June 26, 2014**.

17 12. Class Counsel's request to conduct discovery is **DENIED WITHOUT**
18 **PREJUDICE**. Class Counsel may bring another request to conduct discovery after
19 CRST submits the documentation of compliance ordered above, if the documentation
20 is inadequate to show CRST's compliance with the Settlement Agreement.

21 13. Class Counsel's request for attorneys' fees is **DENIED WITHOUT**
22 **PREJUDICE**. Class Counsel may bring another request for attorneys' fees if the
23 Court later determines that CRST has not complied with the Settlement Agreement.

24 **IT IS SO ORDERED.**

25
26 DATED: April 30, 2014
27
28



HON. ROGER T. BENITEZ
United States District Judge